

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ARMANDO GUZMAN AND JOSE GARCIA,  
individually and on behalf of all persons similarly  
situated who were employed by VLM, INC. d/b/a  
RELIABLE BAKERY,

07-CV-1126 (JG) (RER)

**AFFIRMATION OF  
JOSEPH M. LABUDA**

Plaintiffs,

-against-

**VLM, INC. D/B/A RELIABLE BAKERY, AND  
JOSEPH VITACCO,**

Defendants.

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STATE OF NEW YORK      )  
                            )  
                            )ss:  
COUNTY OF NASSAU      )

JOSEPH M. LABUDA affirms:

1.       I am a member of the law firm Milman & Heidecker, attorneys for defendant VLM, Inc. ("Reliable Bakery") in the above-referenced matter.
2.       I make this affidavit in opposition to plaintiffs' motion for collective action certification and leave to send notice to defendant's employees.
3.       This is a case brought by two (2) former employees seeking, *inter alia*, payment for overtime wages.
4.       In their motion, Plaintiffs' have failed to identify any similarly situated individuals. Rather, plaintiff generically described categories of workers similar to the work that plaintiff performed.
5.       In order to prevail in their motion, plaintiffs must identify specific individuals that worked over forty (40) hours and were not paid overtime. (This is what this entire case is about!) Defendants respectfully submit that such a broad notice to all

of its employees based on such flimsy and conclusory statements is not what was countenanced by the court.

6. Plaintiff never identified any similarly situated employees. Plaintiffs' general description is nothing more than an attempt to go on a "fishing expedition" to see if more employees will join the case.

7. On the other hand, Defendants submit affidavits from eighteen (18) Reliable Bakery employees swearing under oath that they have been properly paid for all regular and overtime hours worked. (The eighteen (18) affidavits are attached hereto as Exhibit "A").

8. Furthermore, Plaintiff Armando Guzman is not an appropriate class representative since he has engaged in acts of moral turpitude such as ripping an alarm off the ceiling and destroying a clock while he was employed at Reliable Bakery. (An affidavit from Joseph Vitacco, President of Reliable Bakery and pictures about these incidents are attached hereto as Exhibit "B").

9. Lastly, if the Court allowed notice (which it should not), Plaintiffs' proposed notice is riddled with inaccuracies and unwarranted solicitations for representation on claims well beyond the FLSA claim. The Court should reject this notice. (Defendant's revised notice is attached hereto as Exhibit "C").

10. Plaintiffs' motion for leave to send notice should be denied as they have failed to demonstrate that other employees were similarly situated.

Dated: Lake Success, New York  
September 7, 2007

/s/  
Joseph M. Labuda